

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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FRANCISCO MELENDEZ,

Plaintiff,

-against-

SUMMONS

DETECTIVE ABDIEL ANDERSON, Shield No. 1429,
UNDERCOVER POLICE OFFICER, Shield No. C114,
SERGEANT PATRICIO OVANDO, Shield No. 3047,
DETECTIVE JODI BROWN Shield No. 4057, and
DETECTIVE THOMAS WOODS, Tax No. 923384,

Index No.:

The Basis of Venue is:
Location of Incident

Defendants.

Plaintiff designates Bronx
County as the place of trial.

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To the above named Defendants:

You are hereby summoned to answer the verified complaint in this action, and to serve a copy of your answer, or, if the verified complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the verified complaint.

DATED: New York, New York
January 2, 2019

Yours, etc.

/s/

JACOBS & HAZAN, LLP.
STUART E. JACOBS, ESQ.
Attorney for Plaintiff
30 Vesey Street, 4th Floor
New York, New York 10007
(212) 577-2690

TO: DETECTIVE ABDIEL ANDERSON, Shield No. 1429, Narcotics Borough Bronx, One Police Plaza, Room 1100, NY, NY 10007
UNDERCOVER POLICE OFFICER, Shield No. C114, Narcotics Borough Bronx, One Police Plaza, Room 1100, NY, NY 10007
SERGEANT PATRICIO OVANDO, Shield No. 3047, Narcotics Borough Bronx, One Police Plaza, Room 1100, NY, NY 10007
POLICE OFFICER JODI BROWN, Shield No. 23758, Narcotics Borough Bronx, One Police Plaza, Room 1100, NY, NY 10007
DETECTIVE THOMAS WOODS, Tax No. 923384, Narcotics Borough Bronx, One Police Plaza, Room 1100, NY, NY 10007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

----- X

FRANCISCO MELENDEZ,

Plaintiff,

INDEX NO.:

VERIFIED COMPLAINT

-against-

DETECTIVE ABDIEL ANDERSON, Shield No. 1429,
UNDERCOVER POLICE OFFICER, Shield No. C114,
SERGEANT PATRICIO OVANDO, Shield No. 3047,
DETECTIVE JODI BROWN Shield No. 4057, and
DETECTIVE THOMAS WOODS, Tax No. 923384,

JURY TRIAL DEMANDED

Defendants.

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Plaintiff, FRANCISCO MELENDEZ, by his attorneys, Jacobs & Hazan, LLP, as and for his Verified Complaint herein, alleges upon information and belief as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action to recover money damages arising out of defendants' violation of plaintiff's rights as secured by the Civil Rights Act, 42 U.S.C. Sections 1983 and 1988, and of rights secured by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and the laws of the State of New York. On January 6, 2016, at approximately 2:00 p.m., plaintiff was lawfully walking in the vicinity of 141st Street and Cypress Avenue, Bronx, New York when the individually named New York City police officer defendants, unlawfully stopped, questioned, frisked, searched, falsely imprisoned, unlawfully seized, and falsely arrested plaintiff. Thereafter, the officers maliciously prosecuted and denied plaintiff a right to a fair trial by falsifying evidence, providing false, misleading and/or incomplete information to the DA's Office and by signing a Criminal Court complaint which contained false information about plaintiff. Those officers that did not arrest plaintiff are liable for failing to intervene and stop the unlawful conduct against claimant that was being committed by their fellow officers. All criminal charges against plaintiff were dismissed and sealed on April 4, 2016. Plaintiff was deprived of his constitutional rights when the individual defendants unlawfully stopped, questioned, frisked, searched, confined, falsely arrested, unlawfully stripped searched, maliciously prosecuted, and denied plaintiff the right to a fair trial, in violation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and the laws of the State of New York.

PARTIES

2. Plaintiff Francisco Melendez is a resident of the state of New York.

3. DETECTIVE ABDIEL ANDERSON, Shield No. 1429, is and was at all times relevant herein, an officer, employee, and agent of the New York City Police Department.

4. DETECTIVE ABDIEL ANDERSON, Shield No. 1429, is and was at all times relevant herein, assigned to Bronx Borough Narcotics.

5. DETECTIVE ABDIEL ANDERSON, Shield No. 1429 is being sued in his individual and official capacity.

6. UNDERCOVER POLICE OFFICER, Shield No. C114, is and was at all times relevant herein, an officer, employee, and agent of the New York City Police Department.

7. UNDERCOVER POLICE OFFICER, Shield No. C114, is and was at all times relevant herein, assigned to Bronx Borough Narcotics.

8. UNDERCOVER POLICE OFFICER, Shield No. C114 is being sued in his individual and official capacity.

9. SERGEANT PATRICIO OVANDO, Shield No. 3047, is and was at all times relevant herein, an officer, employee, and agent of the New York City Police Department.

10. SERGEANT PATRICIO OVANDO, Shield No. 3047, is and was at all times relevant herein, assigned to the Bronx Borough Narcotics.

11. SERGEANT PATRICIO OVANDO, Shield No. 3047 is being sued in his individual and official capacity.

12. POLICE OFFICER JODI BROWN, Shield No. 23758, is and was at all times relevant herein, an officer, employee, and agent of the New York City Police Department.

13. POLICE OFFICER JODI BROWN, Shield No. 23758, is and was at all times relevant herein, assigned to the Bronx Borough Narcotics.

14. POLICE OFFICER JODI BROWN, Shield No. 23758 is being sued in her individual and official capacity.

15. DETECTIVE THOMAS WOODS, Tax No. 923384, is and was at all times relevant herein, an officer, employee, and agent of the New York City Police Department.

16. DETECTIVE THOMAS WOODS, Tax No. 923384, is and was at all times relevant herein, assigned to the Bronx Borough Narcotics.

17. DETECTIVE THOMAS WOODS, Tax No. 923384 is being sued in his individual and official capacity

18. At all times relevant herein, the individual defendants were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of the New York City Police Department, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the New York City Police Department at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the New York City Police Department and incidental to the lawful pursuit of their duties as officers, employees and agents of the New York City Police Department.

19. Defendant City of New York is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. The defendant City of New York assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by the New York City Police Department.

20. This action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving intentional actions, as well as the defendant, and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

21. Plaintiff has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

STATEMENT OF FACTS

22. On January 6, 2016, at approximately 2:00 p.m., plaintiff was lawfully walking in the vicinity of 141st Street and Cypress Avenue, Bronx, New York, when the individually named New York City police officer defendants proceeded to unlawfully stop, question, frisk, seize and detain plaintiff without his consent, and without reasonable suspicion, probable cause, or any legal justification.

23. At no time prior to stopping plaintiff did the defendant police officers have any reasonable suspicion, probable cause, or objective factual basis to believe plaintiff had committed a crime, was about to commit a crime, or was in the process of committing a crime.

24. At no time was plaintiff in possession of any illegal drugs, weapons, or contraband of any kind on January 6, 2016, nor did the defendant police officers have an objective reason to believe plaintiff possessed illegal drugs, weapons, or contraband of any kind.

25. Nevertheless, the defendant police officers unlawfully stopped, questioned, frisked, searched, and handcuffed plaintiff and falsely arrested him without legal justification or probable cause.

26. The individually named police officers unlawfully searched plaintiff's person without probable cause or any legal justification and did not locate any illegal drugs, weapons or contraband as a result of the search.

27. The plaintiff was placed in a police van and driven around for several hours before finally he was transported to the 40th precinct.

28. Upon arrival at 40th precinct, the defendant police officers photographed, fingerprinted and placed plaintiff in a holding cell.

29. While at the 40th precinct, plaintiff was subjected to an unlawful strip search without reasonable suspicion or probable cause.

30. On or about January 7, 2016, plaintiff was transported from the 40th precinct to Bronx Central Booking.

31. Based upon the false, misleading, and incomplete information provided to the District Attorney's Office by the defendant police officers and sworn to by defendant Detective Abdiel Anderson and defendant Undercover Police Officer, Shield No. C114 in the criminal court complaint, defendants maliciously initiated a prosecution against plaintiff without probable cause, and as a result plaintiff was falsely alleging that plaintiff was involved with a drug sale despite knowing that this information was false.

32. Specifically, defendant Detective Anderson and Undercover Police Officer, Shield No. C114 signed a criminal court complaint falsely stating that plaintiff was the lookout in regards to an alleged drug sale when in fact they knew that plaintiff had no involvement in a drug sale.

33. On or about January 8, 2016, after approximately 48 hours in custody, plaintiff was arraigned in Bronx Criminal Court and plaintiff was released on his own recognizance.

34. Thereafter, plaintiff was forced to appear in Court on approximately 2 occasions before all charges against plaintiff were dismissed and sealed on April 4, 2016.

35. Some of the police officer defendants observed the violation of plaintiff's rights under the Constitution of the United States and New York State Law and did nothing to prevent the unjustifiable stop, question, frisk, search, false arrest, false imprisonment, unlawful strip search, malicious prosecution, and denial of fair trial and due process rights to plaintiff.

36. The unlawful stop, question, frisk, search, false arrest, false imprisonment, unlawful strip search, malicious prosecution, denial of due process, denial of a fair trial, against

plaintiff by the individually named defendants caused plaintiff to sustain physical, psychological and emotional trauma.

FIRST CAUSE OF ACTION

Violation of Plaintiff's Fourth Amendment, Fifth Amendment, and Fourteenth Amendment Rights

37. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 36 with the same force and effect as if more fully set forth at length herein.

38. The individually named police officer defendants while acting in concert and within the scope of their authority, caused plaintiff to be unlawfully stopped, questioned, frisked, seized, unlawfully searched, falsely arrested, falsely imprisoned, maliciously prosecuted plaintiff, subjected to denial of his due process rights and denied the right to a fair trial without probable cause in violation of plaintiff's right to be free of an unreasonable seizure and denial of due process under the Fourth and Fifth Amendment of the Constitution of the United States and to be free of a deprivation of liberty under the Fourteenth Amendment to the Constitution of the United States.

SECOND CAUSE OF ACTION

False Arrest and False Imprisonment

39. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 38 with the same force and effect as if more fully set forth at length herein.

40. The acts and conduct of the defendants constitute false arrest and false imprisonment under the laws of the State of New York. Defendants intended to confine plaintiff and, in fact, confined plaintiff, and plaintiff was conscious of the confinement. In addition, plaintiff did not consent to the confinement and the confinement was not otherwise privileged.

41. As a direct and proximate result of such acts, defendants deprived plaintiff of his rights under the laws of the State of New York and the United States Constitution.

42. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

43. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

44. As a result of the aforementioned conduct of defendants, plaintiff sustained injuries, including but not limited to physical, economic, emotional and psychological injuries.

THIRD CAUSE OF ACTION

Unlawful Stop, Question, and Frisk

45. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 44 with the same force and effect as if more fully set forth at length herein.

46. The illegal approach, pursuit, stop, questioning and frisk employed by defendants herein terminated plaintiff's freedom of movement through means intentionally applied.

47. The conduct of defendants in stopping, frisking, and searching, plaintiff were performed under color of law and without any reasonable suspicion of criminality or other constitutionally required grounds.

48. As a direct and proximate result of such acts, defendants deprived plaintiff of his rights under the laws of the State of New York and the United States Constitution

49. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

50. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

51. As a result of the aforementioned conduct of defendants, plaintiff sustained injuries, including but not limited to physical, economic, emotional and psychological injuries.

FOURTH CAUSE OF ACTION

Unlawful Search

52. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 51 with the same force and effect as if more fully set forth at length herein.

53. The illegal approach, pursuit, stop and search inside plaintiff's, pockets, inside of the waistband of his pants and underneath his clothing employed by defendants herein terminated plaintiff's freedom of movement through means intentionally applied.

54. Defendants lacked probable cause to search plaintiff.

55. As a direct and proximate result of such acts, defendants deprived plaintiff of his rights under the laws of the State of New York and the United States Constitution.

56. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

57. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

58. As a result of the aforementioned conduct of defendants, plaintiff sustained injuries, including but not limited to emotional and psychological injuries.

FIFTH CAUSE OF ACTION

Denial of Right to Fair Trial

59. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered 1 through 58 with the same force and effect as if fully set forth herein.

60. Defendants, individually and collectively, manufactured and/or withheld false evidence and forwarded this false evidence to prosecutors in the Bronx County District Attorney's Office.

61. Defendants filled out false and misleading police reports and forwarded them to prosecutors in the Bronx County District Attorney's Office.

62. Defendants signed false and misleading criminal court affidavits and forwarded them to prosecutors in the Bronx County District Attorney's Office.

63. In withholding/creating false evidence against plaintiff Francisco Melendez and in providing/withholding information with respect thereto, defendants violated plaintiff's constitutional right to a fair trial under the New York State Constitution and under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

64. As a result of the foregoing, plaintiff Francisco Melendez, sustained, inter alia, loss of liberty, emotional distress, embarrassment and humiliation, lost earnings and deprivation of his constitutional rights.

65. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

66. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

SIXTH CAUSE OF ACTION

Unlawful Strip Search

67. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 68 with the same force and effect as if more fully set forth at length herein.

68. Plaintiff was searched by defendants without an individualized reasonable suspicion or probable cause to believe that plaintiff was concealing weapons or other contraband, based on a crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest.

69. As a result of the aforementioned conduct of defendants, plaintiff Bernard Miller sustained injuries.

70. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

71. The City, as the employer of defendants, is responsible for his wrongdoing under the doctrine of respondeat superior.

SEVENTH CAUSE OF ACTION

Malicious Prosecution

72. Plaintiff repeats and realleges paragraphs 1 through 71 as if fully set forth herein.

73. The acts and conduct of the defendants constitute malicious prosecution under the laws of the United States Constitution, State of New York and New York State common law.

74. Defendants commenced and continued a criminal proceeding against plaintiff.

75. There was actual malice and an absence of probable cause for the criminal proceeding against plaintiff and for each of the charges for which he was prosecuted.

76. The prosecution and criminal proceedings terminated in plaintiff's favor on the aforementioned date.

77. Plaintiff was subjected to a post-arraignment deprivation of liberty sufficient to implicate plaintiff's Fourth Amendment rights.

78. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

79. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

EIGHTH CAUSE OF ACTION

Failure to Intervene

80. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 79 with the same force and effect as if more fully set forth at length herein.

81. Defendants had an affirmative duty to intervene on behalf of plaintiff, whose constitutional rights were being violated in their presence by other officers.

82. Defendants failed to intervene to prevent the unlawful conduct described herein.

83. As a result of the foregoing, plaintiff's liberty was restricted for an extended period of time, he was put in fear of his safety, and he was humiliated and subject to other physical constraints.

84. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

85. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

JURY DEMAND

86. Plaintiff hereby demands trial by jury of all issues properly triable thereby.

PRAAYER FOR RELIEF

WHEREFORE, plaintiff Francisco Melendez demands judgment against the defendants on each cause of action in amounts to be determined upon the trial of this action which exceeds the jurisdiction of lower courts, inclusive of punitive damages and attorney's fees inclusive of costs and disbursements of this action, interest and such other relief as is appropriate under the law. That the plaintiff recover the cost of the suit herein, including reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

Dated: New York, New York
January 2, 2019

By: /s/

STUART E. JACOBS
DAVID M. HAZAN
JACOBS & HAZAN, LLP
Attorneys for Plaintiff
30 Vesey Street, 4th Floor
New York, NY 10007
(212) 577-2690

TO: DETECTIVE ABDIEL ANDERSON, Shield No. 1429, Narcotics Borough Bronx, One Police Plaza, Room 1100, NY, NY 10007
UNDERCOVER POLICE OFFICER, Shield No. C114, Narcotics Borough Bronx, One Police Plaza, Room 1100, NY, NY 10007
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DETECTIVE THOMAS WOODS, Tax No. 923384, Narcotics Borough Bronx, One Police Plaza, Room 1100, NY, NY 10007

ATTORNEY'S VERIFICATION

STUART E. JACOBS, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am a partner of the law firm of **JACOBS & HAZAN, LLP**, I have read the annexed **VERIFIED COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files. The reason this verification is made by me and not Plaintiff is that Plaintiff does not reside in the county wherein I maintain my office.

DATED: New York, New York
January 2, 2019

/s/
STUART E. JACOBS